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 20 IN THE UNITED STATES DISTRICT COURT
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 22 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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 28 **JUAN PORTILLO,** Petitioner,
 v.
VICTOR ALAMGER, WARDEN, et al., Respondents.

CV 08-0706-LAB (JMA)

**RESPONDENT'S REQUEST FOR
 STAY PENDING ISSUANCE OF
 THE MANDATE IN *Hayward***

The Honorable Jan M. Adler
 U.S. Magistrate Judge

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1 jurisdiction. Therefore, Respondent requests a stay of this case pending the issuance of the
 2 mandate in *Hayward*.

3 **ARGUMENT**

4 **I.**

5 **THE COURT SHOULD EXERCISE ITS DISCRETION AND STAY THIS
 6 MATTER PENDING ISSUANCE OF THE MANDATE IN *HAYWARD*
 7 BECAUSE BOTH THE BALANCE OF THE INTERESTS AND
 8 CONSIDERATIONS OF JUDICIAL ORDER AND ECONOMY FAVOR
 9 GRANTING A STAY.**

10 A trial court has discretion to ensure the just and efficient determination of a case by
 11 staying it pending the resolution of other proceedings where a stay would be “efficient for [the
 12 court’s] docket and the fairest course for the parties.” *Leyva v. Certified Grocers of Cal.*,
 13 593 F.2d 857, 863 (9th Cir. 1979). In determining whether to grant a stay, a court should
 14 consider the possible damage that may result, the hardship or inequity that a party may suffer,
 15 and the orderly course of justice, in terms of simplifying or complicating the issues, proof, and
 16 questions of law, that could result from the issuance of a stay. *Lockyer v. Mirant Corp.*, 398 F.3d
 17 1098, 1109, 1111 (9th Cir. 2005). A court should also take into account the existence of similar
 18 cases that are pending in the same district court, and the probability that more are likely to be
 19 filed. *Id.* Staying cases that are on the forefront of an issue provides a necessary delay, allowing
 20 for resolution of the issues and resulting in uniform treatment of like suits. *Id.*

21 As the resolution of *Hayward* could significantly impact this case and numerous similar
 22 cases and issuing a stay would prevent unfairness and serve the interests of judicial economy, the
 23 Court should therefore exercise its discretion and stay this matter pending the issuance of the
 24 mandate in *Hayward*.

25 **A. Moving Forward with this Case Before the Finality of *Hayward*
 26 Does Not Serve the Interest of Judicial Economy.**

27 Granting a stay in this case serves the interests of judicial order and economy. On May
 28 16, 2008, the Ninth Circuit granted rehearing en banc in *Hayward*. (Ex. 1.) At issue before the
 en banc panel in *Hayward* are two threshold issues which are necessary to the resolution of this
 case: 1) whether California has created a federally protected liberty interest in parole for life

1 inmates, and 2) if a liberty interest is created, what process is due under clearly established
 2 Supreme Court authority. Resolution of these issues could establish that Petitioner does not have
 3 a federally protected liberty interest in parole, potentially allowing the Court to dismiss his
 4 claims for lack of jurisdiction without requiring briefing from the parties. Moreover, it would be
 5 wasteful to proceed in this case without the Ninth Circuit's holdings in these matters, as the
 6 parties would need to brief issues that will be decided *en banc* and then submit supplemental
 7 briefing to apply the law as clarified in the *en banc* decision. The two rounds of pleadings may
 8 unnecessarily complicate the matters raised and would impair the orderly course of justice.
 9 Waiting for the resolution of *Hayward* would thus conserve Court resources, and prevent the
 10 Court from having to revisit this matter if *Hayward* is modified or reversed.

11 A stay would also serve judicial order and economy by maintaining uniform treatment of
 12 like suits, as once the law is settled it can be uniformly applied. In many habeas petitions
 13 challenging California parole decisions, the Ninth Circuit has *sua sponte* stayed submission of
 14 the cases until the resolution of *Hayward*. *See, e.g., Tolliver v. Carey*, no. 07-15347; *Boatman v.*
 15 *Brown*, no. 05-16199; *Smiley v. Hernandez*, no. 06-55727; *Valdivia v. Brown*, no. 08-15650;
 16 *Johnson v. Newland*, no. 04-16712; *Varner v. Brown*, no. 05-16029; *Johnson v. Finn*, no. 06-
 17 17042; *Clark v. Shepherd*, no. 06-55065; *Cooke v. Solis*, no. 06-15444.

18 Granting a stay would therefore conserve judicial resources and serve the Court's interest
 19 in orderly managing these proceedings.

20 **B. A Stay Would Not Unfairly Delay Petitioner in Pursuing His Claims.**

21 A stay of this case at the district level would not unfairly impose any additional or
 22 otherwise avoidable hardship on Petitioner. As discussed above, if the parties proceed in this
 23 case additional briefing will likely be needed after the decision in *Hayward*, perhaps delaying
 24 final resolution. Also, even if this court decides this case before *Hayward*, it is likely the losing
 25 party will file an appeal, and that appeal may be delayed pending resolution of *Hayward*. (See
 26 Arg. I.A.)

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CONCLUSION

When the equities are balanced, the parties' interests and the interests of judicial economy support staying this case pending the final resolution of *Hayward*. Staying this case until challenges to *Hayward* are resolved and that decision becomes final promotes the orderly resolution of this matter, and will assist in maintaining uniformity of like suits pending before this Court and similar cases that will be filed in the future. Respondent therefore requests that the Court exercise its discretion to stay this matter pending issuance of the mandate in *Hayward*.

Dated: July 7, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
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Attorneys for Respondent

SA2007303954

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Portillo v. Almager**

Case No.: **CV 08-0706 LAB (JMA)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 7, 2008, I served the attached **RESPONDENT'S REQUEST FOR STAY PENDING ISSUANCE OF THE MANDATE IN HAYWARD** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Juan A. Portillo
CDC # H-80425
Centinela State Prison
P.O. Box 931
Imperial, CA 92251-0931

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 7, 2008, at San Diego, California.

B. Magallanes

Declarant

Signature

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